TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 402

THOMAS M. WAMPLER, APPELLANT,

vs.

E. LEE LECOMPTE, STATE GAME WARDEN OF MARYLAND, AND FREDERICK S. BARBER, DISTRICT DEPUTY, ETC.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

FILED AUGUST 28, 1930

(35,324)

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INDEX

	Original	Print
Record from circuit court of Charles County	3	1
Docket entries	3	1
Bill of complaint	4	1
Order to show cause	6	3
Answer	7	4
Exhibit "A"—Blue print	14	8
Opinion, Digges, J.	15	8
Judgment	19	13
Note of appeal	20	14
Clerk's certificate (omitted in printing)	20	
Proceedings in court of appeals of Maryland	21	14
Petition for appeal	21	14
Order allowing appeal	23	15
Assignments of error	24	16
Citation and service (omitted in printing)	25	
Bond on appeal (omitted in printing)	26	
Notice as to appeal	27	17
Docket entries	28	17
Judgment	29	18
Opinion, Pattison, J.	30	18
Clerk's certificate (omitted in printing)	36	
Statement of points to be relied upon and designation of parts of record to be printed	37	24
Designation of additional part of record to be printed	38	25

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 25, 1930

[fols. 1-3] **IN CIRCUIT COURT OF CHARLES COUNTY**

No. 1885. Equity

THOMAS M. WAMPLER, Plaintiff,

vs.

E. LEE LE COMPTE and FREDERICK S. BARBER, Defendants

DOCKET ENTRIES

Mem., Bill of Complaint & order to docket & issue fd. Oct. 22*th*, 1929.—Order of Court that Defts. show cause & c fd. October 22*th*, 1929.—1st Subpœna, with copy of Bill of Complaint & order of Court, iss'd to Sh'ff of Balto. City Oct. 22*th*, 1929 for service on E. Le Compte.

1st Subpœna, with Copy of Bill of Complaint & Order of Court, iss'd to Sh'ff Chas. Co. Oct. 22*th*, 1929, for service on Frederick S. Barber.—Return of Sh'ff of Balto City "Sd & copy of Bill & Order of Ct. left Oct. 28th, 1929" fd. Oct. 29th, 1929.—Return of Sh'ff of Chas. Co. 'Sd & copy of Bill & order of Court left Oct. 23, 1929" fd. Oct. 31, 1929.

Ans of Respondents and Exhibit A fd. Nov. 1st, 1929.

Opinion and Order of Court fd. Dec. 13th, 1929. (Prayer for injunction denied & bill dismissed, with costs to the defendants.)

Order to enter Appeal fd. Feb. 11th, 1930.

Thomas M. Wampler and J. Read Bailey, Esq. Attorneys for Plaintiff.

Hon. Thomas H. Robinson, Attorney General, and Robert H. Archer, Esq., Attorneys for Defendants.

[fol. 4] In Circuit Court of Charles County

[Title omitted]

BILL OF COMPLAINT—Filed Oct. 22, 1929

To the Honorable the Judges of said Court:

Your orator, humbly complaining, showeth unto the Court the following facts:

First. That he is a citizen of the United States, and a resident of Charles County, in the State of Maryland.

Second. That on the Third day of June, 1929, there was duly issued to your orator, a license as provided by law to erect, set and maintain a stationary booby, brush or stake blind in the Potomac River for the purpose of hunting water fowl, the said license being Number 2.

Third. That by virtue of said license, on to wit, the 4th day of October, 1929, he erected a blind in accordance with law and not more than 300 yards from the natural shore line of the Potomac River and not in the channel thereof, said blind being erected in the waters of said river as aforesaid and in front of the shore line of the property owned by your orator, near Fenwick, Charles County, State of Maryland.

Fourth. Your orator says that the said defendants, E. Lee Le Compte and Frederick S. Barber unlawfully destroyed the said blind of your orator, on to wit, about the 11th day of October, 1929 and the said defendants have threatened to prevent your orator from again lawfully erecting said blind and have threatened to destroy and to continue to destroy the same when your orator tries to again erect the same, and to prevent the use thereof.

Fifth. Your orator is advised, believes and therefore [fol. 5] alleges that the destruction of his said duck blind and the threatened continued destruction thereof by the defendants and the interference with its lawful use by your orator, and the threatened continued interference with its lawful use by your orator is a violation of his rights under the Constitution and laws of the State of Maryland and is depriving him of his property and lawful rights without any warrant or authority in law, and for which wrongs he has no adequate remedy at law.

To the end therefore:

1st. That the defendants, E. Lee Le Compte and Frederick S. Barber, each of them, their and each of their agents, servants and employees may be enjoined and restrained from molesting and or interfering with the erection, maintainance and lawful use of said ducking blind of your orator, located and to be located as heretofore set forth in this bill, and that your orator may have such other and further relief, both general and special as his case may require.

May it please your Honors to grant unto your orator the writ of subpœna directed to the said E. Lee Le Compte and Frederick S. Barber, adults, and residents of the State of Maryland, commanding them and each of them to be and appear in this Court at some certain day to be named therein, and answer the premises and abide by and perform such decree as may be passed herein; and that this Honorable Court will grant an injunction pendente lite, and upon final hearing permanently, enjoining and restraining the said defendants and each of them, their and each of their agents, servants and employees from molesting and/or interfering with the erection, maintainance and lawful use of the aforesaid ducking blind of your orator.

And as in duty bound he will ever pray and etc.

Thomas M. Wampler, Thomas M. Wampler, in Propria Persona. Thomas M. Wampler, Solicitor for Plaintiff J. Read Bailey.

[fol. 6] *Duly sworn to by Thomas M. Wampler. Jurat omitted in printing.*

Endorsement

Mr. Clerk:

Please docket suit as above, file within Bill and issue as prayed.

J. Read Bailey, Thomas M. Wampler, Solicitors for Plaintiff.

In Circuit Court of Charles County

Order to Show Cause—Filed Oct. 22, 1929

On the aforegoing bill, it is, this 22nd day of October 1929, by the Circuit Court for Charles County and State of Maryland, ordered that the defendants show cause on or before the 2nd day of November 1929, why the prayer of the aforegoing bill should not be granted, provided a copy of this bill and order be served on said defendant or their solicitors on or before the 28th day of October 1929.

W. Mitchell Digges, Chief Judge.

[fol. 7] IN CIRCUIT COURT OF CHARLES COUNTY

ANSWER—Filed November 1, 1929

To the Honorable the Judges of said Court:

The answer of E. Lee Le Compte, State Game Warden, of Maryland, and Frederick S. Barber, District Deputy Game Warden for Charles County, defendants in the above entitled cause, to the bill of complaint of Thomas M. Wampler against them in this Court exhibited, respectfully shows:

These respondents reserving all manner of exceptions to said bill of complaint for its manifold errors, irregularities and improper statements of fact, for answer thereto, or so much thereof as they are advised it is material for them to answer, answering say:

1. That the said bill of complaint and each and every paragraph ther-of are bad in substance and insufficient in law.

2. That the said complainant has not stated in his bill of complaint or in any paragraph thereof, such a case as entitles him to relief in equity.

3. That as to the first and second paragraphs of said bill, your respondents have no knowledge of the matters and facts therein alleges, and neither admit nor deny the same, but demand strict proof thereof.

4. Your respondents deny the allegations contained in the third paragraph of said bill of complaint.

5. Answering the fourth paragraph of said bill your respondents deny that they unlawfully destroyed any duck blinds belonging to the complainant or to any one else in the waters of Charles County, either on the 11th day of October, 1929, or at any other time, and further answering said paragraph deny that they have threatened to prevent the complainant or any one else from lawfully erecting a duck blind in the waters of said county, or that they have threatened to destroy any blind lawfully erected, or to be erected, in the waters of said county or elsewhere, either by the complainant or any one else.

[fol. 8] 6. Your respondents deny the allegations of facts and conclusions of law set forth in the fifth paragraph of said bill.

Further answering said bill of complaint generally, your respondents allege that the respondent, E. Lee Le Compte is the State Game Warden of Maryland, charged with the enforcement of all laws pertaining to game, fish and water fowl within the limits of the State of Maryland, and the respondent, Frederick S. Barber is a District Deputy Game Warden duly and lawfully appointed for the enforcement of all laws pertaining to game, fish and water fowl within the limits of the State of Maryland and particularly within the limits of Charles County, and the waters of the State adjacent thereto.

Further answering said bill your respondents allege that under the provisions of Section 46 of Article 99 of the Code of Public General Laws of Maryland, title "Water Fowl, Fish and Game," subtitle "Water Fowl, Mig-atory Birds," it is provided as follows:

"Whenever an owner of land bordering on any of the waters of this State shall desire to erect a booby, brush or stake blind in front on his property, or other person to whom he shall give permission, shall not place same within 250 yards of the dividing line of any property owned by him and the adjoining property bordering on said waters * * * unless with the consent of the adjoining land owner."

That under the provisions of Section 40 of said Article, it is provided that owners of riparian rights on the waters of this State shall be first entitled to make a choice of position in front of their property for the purpose of erecting ducking blinds, subject, of course, to the provisions of Section 46 above quoted, and subject also to the provisions of Section 41 of said Article, providing the distance from shore and the distance between blinds; that in order to comply with the provisions of Section 40, it is necessary for such riparian owner to take out a license for such blind on or before October 10th, and to designate the location of

such blind by the erection of a stake on which shall appear the owner's name, together with the number of the lisense issued him by the Clerk of the Circuit Court therefor; that [fol. 9] under the provisions of Section 41 above referred to, such blinds shall not be less than 500 yards apart, and, therefore, any stake that might be erected prior to October 10th to mark the future location of a proposed blind in accordance with the provisions of Section 40 must be 500 yards apart.

That on or about September 5th, the respondent, Frederick S. Barber, discovered in the waters of the Potomac River in front of land alleged to belong to the complainant, two stakes purporting to mark the future location of ducking blinds which stakes were marked Nos. 2 and 3,—No. 2 having attached to it the name of the complainant and No. 3 the name of "Arthur Johnson"; that these stakes were only 90 yards apart, and both of them were less than 250 yards from the dividing line between the property alleged to be owned by the complainant and the adjoining properties on either side thereof; that your said respondent, ascertained that both of said stakes were established without the consent and against the objection of the adjoining land owners bordering on said waters; that the said respondent communicated these facts to the respondent, E. Lee Le Compte, and on the 9th day of October, the said E. Lee Le Compte notified the said Barber to employ the County Surveyor of Charles County, Louis H. Steffens to make a survey of the short line of the Potomac River along the area in question showing the property line of the riparian owners bordering thereon, together with the stakes which had been erected in said waters to mark the location of ducking blinds therein; that the said E. Lee Le Compte further directed the said Barber that if it was discovered that any of these locations were taken in violation of the laws of Maryland that the stakes marking said locations should be removed.

That in pursuance of said instructions from his Superior, respondent Barber had a survey made as above directed, a blue print of said survey being filed herewith as part hereof marked "Respondents' Exhibit A."

That as shown by said Exhibit A, both stakes Nos. 2 and 3 were improperly and illegally erected for the pur-

pose of marking the location of blinds both by reason of being too close together and too close to the dividing line of the adjoining property owners, and for these reasons [fol. 10] the respondent, Barber removed both of said stakes.

That on the southerly side of the land claimed to be owned by the complainant, the land is owned by a certain Grover C. Willett, which property has a frontage on the Potomac River of about 260 feet; that south of and adjoining the Willett property the riparian owner is Daniel Thew Wright, who owns all of the land between that point and Pomenkey Creek, the said Wright also owning by deed of purchase from said Willett, the right to erect, maintain and use duck blinds and other lawful contrivances for the purpose of shooting and taking wild fowl on said waters in front of the said Willett property.

That on the 8th day of June, 1929, the said Wright secured from the Clerk of the Circuit Court for Charles County duck blind license No. 7, for the purpose of erecting a duck blind in front of his said property, and before October 10th, placed a stake with his name and license number thereon in front of his said property and more than 250 yards from the southern boundary of the property alleged to be owned by the complainant, which stake is 255 yards from stake No. 2 above referred to and 345 yards from stake No. 3, above referred to. That the riparian owner on the northerly side of the property alleged to be owned by the complainant is H. F. Olcott, and stakes Nos. 2 and 3 are not only less than 250 yards from his property line but stake No. 3 is actually in front of said Olcott's property.

All of which will more fully appear by reference to Respondents' Exhibit A above referred to.

That as a matter of fact, as shown by said Exhibit A, the property alleged to be owned by the complainant has a water frontage of only 43.7.

7. That your respondents in doing what they have done in reference to the stakes in question in this suit, have only done what the law requires them to do, and if the Court should grant the injunction as prayed by the complainant, it would prevent an officer of the law from performing the duty required of him by his oath of office, and

would enable the complainant to violate the law without fear of prosecution.

[fols. 11–13] Your respondents hereby deny all material facts in said bill of complaint which have not heretofore been either denied or answered.

And, having answered the said bill of complaint your respondents pray to be hence dismissed with their costs.

And as in duty bound, etc.

Thos. H. Robinson, Attorney General. R. H. Archer, Assistant Attorney General.

(Duly sworn to by E. Lee Le Compte. Jurat omitted in printing.

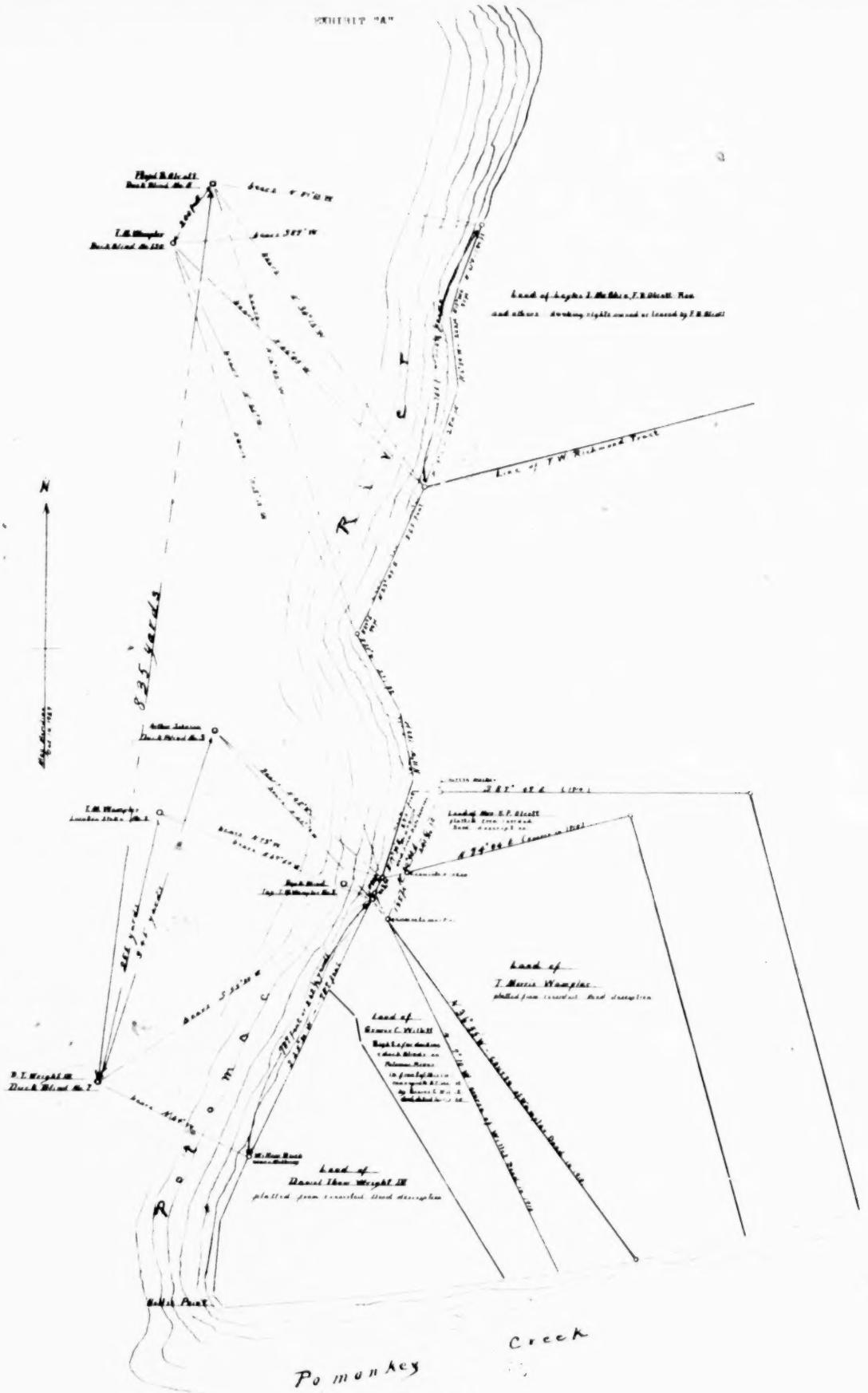
(Here follows Exhibit A, side folio 14)

[fol. 15] In Circuit Court of Charles County

Opinion—Filed Dec. 13, 1929

The bill in this case was filed by the plaintiff, who is a resident of Charles County, Maryland, and alleges that on the third day of June, 1929, there was duly issued to him a license as provided by law to erect, set and maintain a stationary booby, brush or stake blind in the Potomac River for the purpose of hunting water fowl, the said license being numbered 2; that by virtue of said license he did, on the 4th day of October, 1929, erect a blind in accordance with law and not more than 300 yards from natural shore line of the Potomac River, and not in the channel thereof, in front of the shore line of his property, near Fenwick in Charles County; that the defendants the State game warden and the deputy game warden respectively, unlawfully destroyed said blind on or about the 11th day of October, 1929, and have threatened to prevent the plaintiff from again lawfully erecting said blind, and have threatened to destroy and to continue to destroy the same when the plaintiff tries to again erect the same; that the destruction of said duck blind and threatened continued destruc-

EXHIBIT "A"



Po monkey

Plat of

Part of Potomac River Shore

at

McGhiesport 7th Elec. District Charles County, Maryland

showing land holdings on the Potomac River of Duck Blind Applicants and the location of Duck Blinds in the River.

Location of Duck Blinds, as noted, determined by triangulation from points on River Shore, as indicated above.

Surveyed October 10, 1929

Scale 1 inch = 200 feet

tion thereof by the defendants, and the interference with its lawful use by the plaintiff, is a violation of his rights under the Constitution and laws of the State of Maryland and the United States, and is depriving him of his property and lawful rights without any warrant or authority in law, and for which wrongs he has no adequate remedy at law. The prayer of the bill is that the defendants be restrained from molesting or interfering with the erection, maintenance and lawful use of said duck blind located and to be located as set forth in the bill. Upon the allegations of the bill, verified by affidavit, the Court, on the 22nd day of October, 1929, ordered that the defendan-s show cause on or before the 2nd day of November, 1929, why the prayer of the bill should not be granted. In response to the above order the defendants filed an answer in which they alleged that under the provisions of Section 40 of Article 99 of the Code the plaintiff had no authority but on the contrary was prohibited by law from erecting a blind in the position alleged in the bill of complaint, and it became the duty of the defendants to require the removal of said blind, and that upon the plaintiff's refusal to do so, the defend- [fol. 16] ant Barber did destroy the blind in question and ordered the plaintiff not to reconstruct the same. At the hearing on the bill and answer there was no dispute as to the facts, the only question presented being one of law, in which the plaintiff conceded that if the statute under which the defendants acted is constitutional and valid, then the defendants were entitled and it was their duty to remove or require the removal of the blind in controversy; to that the single question presented, and which was argued by counsel for the respective parties, is as to the constitutionality of the legislation which prohibits the erection of a blind out in the waters of the Potomac River bordering on Charles County, by an owner of shore property which contains less than 500 yards of water front. The waters of the Potomac River and the bottoms under the waters, beyond low water mark, on the Maryland side of the river, are the property of the State of Maryland, and therefore the State has the undoubted right to regulate, subject to the laws of the United States in respect to navigation, the erection of any blind thereon or therein, from which ducks and other wild fowl are permitted to be killed. There can be no question that the State has the power, and if through

its legislation is saw fit, could prevent the erection of any and all blinds in or over the waters of the Potomac River within the boundaries of the State. The right to prohibit necessarily includes the right to regulate, the only limitation thereon being that when the State undertakes to regulate, it must not establish classification among its citizens or property owners which would be arbitrary and discriminatory and which classification would not reasonably conserve the object which the legislature had in view. This object in the present case is the conservation of wild fowl and the protection and safety of those permitted to kill same. If the legislation, when construed, does not unreasonably and unjustly discriminate between property owners and does not indicate an arbitrary classification that has no reasonable relation to the object sought, the question is one for the legislature and not for the courts. It is clear that the legislature might provide a classification so unreasonable as to be highly discriminatory and unjust, and in such event the courts would strike down the legislation as being in conflict with the organic laws which provides for the equal protection under the law of [fol. 17] all people. In Jeffry Mfg. Co. vs. Blagg, 235 U. S. 576, the Supreme Court said:

"This Court has many times affirmed the general proposition that it is not the purpose of the 14th Amendment in the equal protection clause to take from the States the right and power to classify the subjects of legislation. It is only when such attempted classification is arbitrary and unreasonable that the Court can declare it beyond the legislative authority. * * * That a law may work hardship and inequality is not enough. Many valid laws, from the generality of their application, necessarily do that, and the legislature must be allowed a wide field of choice in determining the subject matter of its laws, what shall come within them, and what shall be excluded."

In the case of Ozan Lumber Co. vs. Union County Bank, 207 U. S. 251, the same court said, in dealing with a statute of the State of Arkansas:

"The plain purpose of the whole statute is to create and enforce a proper police regulation. * * * It is because such imaginary and unforseen cases are so rare that the gen-

eral classification ought not to be rendered invalid. In such case there is really no substantial denial of the equal protection of the laws within the meaning of the amendment. It is almost impossible, in some matters, to foresee and provide for every imaginable and exceptional case, and a legislative ought not to be required to do so at the risk of having its legislation declared void, although appropriate and proper upon the general subject upon which such legislation is to act, so long as there is no substantial and fair ground to say that the statute makes an unreasonable and unfounded general classification, and thereby denies to any person the equal protection of the laws. In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things."

And again, in Lindsley vs. Natural Carbonic Gas Co., 220 U. S. 78, it is said:

"The equal protection clause of the 14th Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. When the [fol. 18] classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

And in Watson vs. Nevin, 128 U. S. 582:

"Whenever a law operates alike on all persons and property similarly situated, equal protection cannot be said to be denied."

The present law permits riparian owners with more than 500 yards of water frontage on the Potomac River to erect blinds out in the water opposite their property,

provided such blinds be at least 500 yards apart, and not closer than 250 yards to the division line of the adjoining property, without the consent of the adjoining landowner, while it denies that privilege to riparian owners having less than 500 yards frontage on said river. The question is: Is such classification so arbitrary and unreasonable as to warrant the Court in striking it down as being repugnant to the 14th Amendment of the Federal Constitution? I think not. This legislation is passed in the interest of conservation of wild fowl, and at the same time protecting from injury those who are permitted to erect and shoot from blinds over the waters of the State. It must be conceded by all that some regulation, under the police power of the State, is necessary to attain these objects. This regulation is a legislative function. It may be that some, and possible the Court, would think that such a classification permitting only those who own 500 yards of water-front to erect blinds, is a greater requirement than ought to be exacted. But when the case presented is one on or even near the border line, the legislature is the proper judge of what the requirement should be. I am of the opinion that the regulation contained in the present law has a substantial and reasonable relation to the object sought to be attained by the Legislature, and it was therefore competent for it to validly enact such legislation. When we look at the whole of the act, we find the legislative purpose to be conservation of wild fowl by regulation of the time and conditions in which and under which they may be lawfully killed. In attaining this object the Legislature seems to have had in mind, and as far [fol. 19] as it is possible for the paramount object to permit, it has undertaken to preserve the rights of riparian owners of all classes, whether large or small. There is no discrimination between owners of land of the same frontage in the same local locality. By Sec. 40 of Art. 99 it is provided that all owners of riparian rights, their lessees or licensees on the waters of this State shall by virtue of said ownership be first entitled to make a choice of the set or position in front of the property of which they are the owners, provided they shall avail themselves of said choice of locality and clearly mark the same on said waters by erecting a stake on which shall appear the license number of each blind and the licensee's name, on or before

October 10 of each and every year, and for the protection of shore owners desiring to locate a blind on their shore, the purchase of a license and the establishment of a stake, on which shall be painted the license number and the name of the licensee, such stake not to exceed the lawful distance from the shore, and be established in the water, when said stake shall be established on or before October 10, then it shall be termed as a blind. This provision of the law guarantees the right of every owner of waterfront property, no matter what his shore frontage is, to erect a blind on the shore of his property and secure to himself an unobstructed expanse of water at least 500 yards in width, over which water fowl may proceed, unmolested by the erection of any other blind, to the blind of the owner located upon the shore.

For the reasons stated, I am of the opinion that the law attacked here does not violate any of the provisions of the Federal or State Constitutions, but is a proper and legitimate exercise of the police power of this State in the attainment of the object sought by the Legislature, and therefore the injunction sought must be refused and the bill dismissed.

W. Mitchell Digges.

In Circuit Court of Charles County

Judgment—Filed Dec. 13, 1929

This cause coming on for hearing upon bill and answer, after argument by counsel, the proceedings were read and considered.

[fol. 20] Whereupon it is this 13th day of December, 1929, for the reasons stated in the opinion filed herewith:

Adjudged, ordered and decreed by the Circuit Court for Charles County that the prayer for injunction in this case be and the same is hereby denied and the bill dismissed, with costs to the defendants.

W. Mitchell Digges.

IN CIRCUIT COURT OF CHARLES COUNTY

NOTE OF APPEAL—Filed Feb. 11, 1930

Mr. Clerk:

Please enter an appeal from the decree in this cause dated the 13th day of December, 1929.

J. Read Bailey, Chas. Linkins, Solicitors for Plaintiff.

Feb. 11th, 1930.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 21] IN COURT OF APPEALS OF MARYLAND, APRIL TERM, 1930

General Docket, No. 30

THOMAS M. WAMPLER, Appellant,

vs.

E. LEE LECOMPTE, FREDERICK S. BARBER, Appellees

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed Aug. 4, 1930

To the Honorable the Chief Justice and Associate Justices of the Court of Appeals of Maryland:

The petitioner, Thomas M. Wampler, respectfully shows unto this Honorable Court that in the record and proceedings and rendition of the decree in the above cause by the Court of Appeals of Maryland, it being the highest Court of said State in which a decision could be had in the said suit between Thomas M. Wampler vs. E. Lee LeCompte and Frederick S. Barber, No. 30 on the calendar of April term, 1930, of the Court of Appeals of Maryland, manifest error has occurred greatly to his damage and whereby he is aggrieved.

Petitioner shows that in the record and proceedings it appears that there was drawn in question the validity of

Sections 40, 41 and 46 of Article 99, of the Code of Public General Laws of Maryland, title, Water Fowl, Birds and Game; subtitle, Water Fowl and Migratory Birds, and it is claimed that the said sections are repugnant to and in violation of the 14th Amendment of the Constitution of the United States, in that it denies to the petitioner the equal protection of the laws under the Constitution of the United States, and that the said sections deprive the petitioner of his property without due process of law, and the decision of the said Court of Appeals of Maryland was in favor of the validity of said statute.

Wherefore the petitioner prays that an appeal be allowed to the Supreme Court of the United States, and that a transcript of the record, proceedings and papers upon which the said decision of the Court of Appeals of Mary-
[fol. 22] land was made, duly authenticated, be ordered sent to the Supreme Court of the United States at Washington, D. C., under the rules of said Court as in such case is made and provided that the same may be inspected and corrected as according to law and justice should be done.

Thomas M. Wampler, in Propria Persona.

[fols. 23 & 23½] In Court of Appeals of Maryland

[Title omitted]

Order Allowing Appeal to Supreme Court of the United States—Filed Aug. 4, 1930

On this 2nd day of August, 1930, came on to be heard the application of Thomas M. Wampler, appellant, appearing in proper person, for an appeal from the judgment of this Court herein, to the Supreme Court of the United States, and it appearing to the Court from the petition filed herein, that the application ought to be granted, and that a transcript of the record and proceedings upon which the judgment of this Court was rendered, properly certified, should be sent to the Supreme Court of the United States as prayed for in the said petition, that such proceedings may be had as may be just and proper in the premises.

It is therefore ordered that the appeal be allowed upon the appellant giving bond, conditioned as the law directs, in the sum of Five Hundred Dollars, ($500), and that a true copy of the record, assignment of errors, and all proceedings had in this case in the Court of Appeals of Maryland shall be transmitted to the Supreme Court of the United States, properly certified as the law directs, that the said Court may inspect the same and do what according to law should be done.

Carroll T. Bond, Chief Judge of the Court of Appeals of Maryland.

[fol. 24] In Court of Appeals of Maryland

[Title omitted]

Assignments of Error—Filed August 8, 1930

Now comes Thomas M. Wampler, the plaintiff in error in the above entitled cause, and with reference to his petition for an appeal in this case, to the Supreme Court of the United States, assigns the following errors, which the plaintiff in error avers occurred on the trial thereof and upon which he relies to reverse the judgment entered herein as appears in record.

1. The Court of Appeals of Maryland erred in affirming the judgment of the Circuit Court for Charles County, Maryland, dismissing the bill of the plaintiff in error.

2. The Court erred in holding that the statute of Maryland, Sections 40, 41 and 46 [illegible], of the Code of Public General Laws of [illegible]e, Water Fowl, Birds and Game, was not [illegible] with and in violation of the 14th Amendment to the Constitution of the United States.

Thomas M. Wampler, in Propria Persona.

[fol. 25] Citation, in usual form, showing service on R. H. Archer, omitted in printing.

[fol. 26] Bond on appeal for $500.00, approved and filed August 13, 1930, omitted in printing.

[fol. 27] IN COURT OF APPEALS OF MARYLAND

[Title omitted]

NOTICE IN THE MATTER OF THE APPEAL IN THE ABOVE SUIT TO THE SUPREME COURT OF THE UNITED STATES

To E. Lee LeCompte and Frederick S. Barber, Thomas H. Robinson, Attorney General of Maryland; Robert H. Archer, Assistant Attorney General of Maryland, attorneys for the said appellees:

This is to notify you that the Appellant will require the Clerk of the Court of Appeals of Maryland, to duly certify to the Clerk of the Supreme Court of the United States the entire printed record in said suit, and all proceedings in said suit, subsequent to the filing of said record in said Court of Appeals, and also the original citation, giving notice to the Appellees of the allowance of said appeal.

T. M. Wampler, In Propria Persona.

Service of the above notice and præcipe admitted this 15th day of August, 1930.

Thos. H. Robinson, R. H. Archer, Attorneys for the Appellee.

Filed August 19th, 1930.

[fol. 28] IN COURT OF APPEALS OF MARYLAND

[Title omitted]

Appeal from the Circuit Court for Charles County.
Filed March 13th, 1930.
May 22nd, 1930, decree affirmed, with costs.
Opinion filed.
Op., Pattison, J.
To be reported.
June 12th, 1930, decree filed.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 29] IN COURT OF APPEALS OF MARYLAND

THOMAS M. WAMPLER

vs.

E. LEE LECOMPTE

JUDGMENT—Filed June 12, 1930

The appeal in the above case standing ready for hearing, was argued by counsel for the respective parties, and the proceedings have since been considered by the Court.

It is thereupon this 12th day of June, 1930, by the Court of Appeals of Maryland, and by the authority thereof, adjudged, ordered and decreed that the decree dated December 13th, 1929, of the Circuit Court for Charles County be and the same is hereby affirmed, with costs.

Carroll T. Bond, Jno. R. Pattison, Hammond Urner, Wm. H. Adkins, T. Scott Offutt, F. Neal Parke, D. Lindley Sloan.

[fol. 30] No. 30, April Term, 1930

IN COURT OF APPEALS OF MARYLAND, APRIL TERM, 1930

No. 30

THOMAS M. WAMPLER

vs.

E. LEE LECOMPTE, State Game Warden of Maryland, and Frederick S. Barber, District Deputy Game Warden for Charles County

Judge Pattison delivered the opinion of the Court.

OPINION—Filed May 22, 1930

The appeal in this case is from a decree of the Circuit Court for Charles County, dismissing the bill of the appellant, Thomas M. Wampler, a resident of that county, and the owner of a parcel of land, in Charles County, bordering upon the Potomac River.

The bill alleges that E. Lee LeCompte, and Frederick S. Barber, the appellees, destroyed a booby, brush or stake blind of the appellant, located and erected by him in the Potomac River, in front of his shore line, not more than 300 feet therefrom, after having first procured a license therefor, as provided by law. That the appellees not only destroyed his blind, so erected, but they threatened to destroy and to continue to destroy, any blind that he might thereafter erect at that location, and the bill asked that the appellees be restrained from molesting, or interfering with the appellant in again locating, or erecting and maintaining a blind at such place.

The appellees, E. Lee LeCompte, State Game Warden, and Frederick S. Barber, Deputy District Game Warden, answered the bill, averring therein, that what they did as alleged by the appellant in his bill, was lawfully done by them, as officers, in the enforcement of Secs. 40, 41 and 46 [fol. 31] of Art. 99 of the Code of Public General Laws of Maryland, title, Water Fowl, Birds and Game; sub-title, Water Fowl and Migratory Birds; the provisions of which the appellant contends violates the equal protection clause of the Fourteenth Amendment of the Constitution of the United States.

Section 40, of Art. 99, provides, that all owners of riparian rights on the waters of this State, shall by virtue of said ownership be first entitled to make a choice of position in front of their property for the purpose of erecting and maintaining a booby, brush or stake blind, provided they avail themselves of such right by obtaining a license therefor, as required by Section 44, of said Art. and by marking the location and erecting the blind in the manner and within the times therein stated.

Section 41 of said Article, provides, that it shall be unlawful to erect or maintain any blind at a greater distance than 300 yards from the natural shore from which same may be erected; and not less than five hundred yards apart measured in a straight line, except "in the tributaries of the Chesapeake Bay and in the tributaries of the Potomac River in Charles County and on the waters of Baltimore County", where "said blinds shall not be less than 250 yards apart, measured in a straight line."

Section 46 of said Article provides that "Whenever an owner of land bordering on any waters of this State shall

desire to erect a booby, brush or stake blind in front of his property, or other person to whom he shall give permission, he shall not place same within 250 yards of the dividing line of any property owned by him and the adjoining property bordering on said waters (the distance contained herein shall not apply to the waters that are tributary of the Chesapeake Bay and the Potomac River in the Counties of Charles, Calvert and St. Mary's) meaning a line extending out over the waters drawn direct from the dividing line of said properties at the shore line, unless with the consent of the adjoining landowner, same being for the purpose of allowing each landowner bordering on any of the waters of the State permission to avail himself of the privilege of setting, erecting and maintaining a booby, brush or stake blind in front of his property."

[fol. 32] The question thus raised by this appeal, is whether the above Sections of the Public General Laws of Maryland violate the Federal Constitution.

These and other sections of Art. 99 of the Code were enacted to regulate the killing of Water Fowl in the waters of the State of Maryland, and were so enacted in the exercise of the police power of the State. The contention is, that these provisions of the Statute are arbitrary in their classification and consequently deny the equal protection of law to those whom they affect.

As stated in Lindsley vs. Natural Carbonic Gas Co., 220 U. S. 78:

"The rules by which this contention must be stated, as is shown by repeated decisions of this court, are these:

1. The equal protection clause of the 14th Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.

2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.

3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that

would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. Bachtel v. Wilson, 204 U. S. 36-41; Louisville & N. R. Co. v. Melton, 218 U. S. 36; Ozan Lumber Co. v. Union County Nat. Bank, 207 U. S. 251; Munn v. Illinois, 94 U. S. 113; Henderson Bridge Co. v. Henderson, 173 U. S. 582, 615.

The Statute here assailed gives to the owners of land in this State, subject to the regulations therein contained, certain gunning privileges on the waters in front of their lands, if exercised by them within the time prescribed by the Statute, but should they fail to avail themselves of such privileges within the time allotted them, they pass to others, who may thereafter conform to the requirements of the Statute. The validity of these privileges, revocable at any [fol. 33] time by legislative enactment, was recognized by this Court in the case of Sheehy v. Thomas, 155 Md. 688; and similar statutes granting like privileges to land owners to use the waters and the bottoms thereunder in catching fish and in the cultivation and taking of oysters, have also been held valid by this Court. Dean v. Clacum, 149 Md. 578.

The State has the undoubted right, subject to the laws of the United States, in respect to navigation, to regulate the killing of water fowl from blinds erected in the waters of this State, so long as it makes no unreasonable and unfounded general classification denying any person the equal protection of the law. In Jeffry Mfg. Co. v. Blagg, 235 U. S. 576, the court said:

"This Court has many times affirmed the general proposition that it is not the purpose of the 14th Amendment in the equal protection clause to take from the States the right and power to classify the subjects of legislation. It is only when such attempted classification is arbitrary and unreasonable that the Court can declare it beyond the legislative authority."

The provisions of the Statute making it unlawful to erect blinds in the waters of this state, at a greater distance than 300 yards from the shore and not less than 500 yards apart,

measured in a straight line, were enacted for the conservation of water fowl and the protection and safety of those engaged in shooting them. The necessity for such regulation is apparent, for if blinds could be erected in broad waters at any distance from the shore, without regard to the distance separating them, it would not only be conducive to the destruction and annihilation of ducks and other water fowl, but extremely dangerous to those shooting them.

If all owners of land bordering upon the waters of this State, including those whose shore lines are less than five hundred yards, were granted the privileges mentioned in the Statute, there would not be a compliance with its provisions that blinds should not be erected less than 500 yards apart, or closer than 250 yards from the lines of the adjoining land owners, which provisions were thought necessary by the Legislature for the purposes above stated. [fol. 34] The Legislature in its desire to extend the privileges conferred by the Statute, wherever possible, without violating the objects and purposes of the Statute, to owners having a frontage upon the water of less than 500 yards, inserted in the Statute the provision that an owner of land, with the consent of the adjoining land owners, could avail himself of the privileges of erecting and maintaining a blind in front of his land. This provision, of course, was subject to the further provision that the blind when so erected should not be less than 250 yards from the lines of an owner whose consent he had not obtained, and not closer than 500 yards to the nearest blind erected in accordance with the provisions of the Statute.

The location of the blind here sought to be erected by the appellant was in the waters of the Potomac river, where, by the Statute, blinds were not to be erected less than 500 yards apart. The land owned by him bordered upon said river for a distance of only 43 7 10 feet. Therefore, he had to acquire the permission or consent of owners of land bordering upon said river extending thereon for a distance of at least 250 yards on each side of the position at which his proposed blind was to be located, before he could avail himself of the privileges of the Statute. It was because of his inability or failure to obtain such permission or consent, that he was not permitted to erect

a blind in front of his land. This fact he complains of, contending that the discrimination resulting from the provisions of the Statute whereby those obtaining the necessary consent could erect a blind and those who could not obtain such permission or consent could not erect one, was an unlawful discrimination against the latter.

That the right of an owner, having a shore frontage less than five hundred yards, to erect and maintain a blind in the waters in front of his land is by the Statute made dependent upon his ability to obtain the consent of adjoining land owners does not render the Statute unconstitutional. If as thought by the appellant, his inability to obtain such consent is a hardship or inequality upon him such fact does not warrant us in holding that the Statute contravenes the Constitution. In Jeffry v. Blagg, supra, the court said [fol. 35] "that a law may work hardship and inequality is not enough. Many valid laws from the generality of their application necessarily do that, and the Legislature must be allowed a wide field of choice in determining the subject matter of its laws, what shall come within them, and what shall be excluded."

It is also contended by the appellant that the Federal Constitution is violated by the provisions of the Statute which provides that blinds when erected in certain inland waters of the State need not be further apart than 250 yards. Why these provisions were inserted in the Statute we are not informed, but we may assume, until the contrary is shown, that a state of facts in respects thereto, existed, which warranted the legislature in so legislating. In Lindsley vs. Natural Carbonic Gas Co. 220 U. S. 78, supra, the court said, "If any state of facts, can reasonably be conceived that would sustain it, the existence of that state of facts at the time the law was ena-ted must be assumed" and "one who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

As to the waters of the Potomac River in Maryland, the privileges mentioned in the Statute are conferrd upon the owners of land bordering upon said waters for the distance of at least five hundred yards, or upon those owners with less shore frontage, having the consent of adjoining and nearby owners, who, with them, have in the aggregate an

unbroken shore line of at least five hundred yards, to erect blinds in front of the lands of such owners or in front of their own lands. This classification reasonably conserves the objects which the legislature had in view in the enactment of the Statute, the conservation of wild fowl and the protection of those hunting or shooting them, and it is not, in our opinion, arbitrary or unreasonable.

Therefore the decree denying the injunction and dismissing the bill will be affirmed.

Decree affirmed, with costs.

Filed May 22, 1930. True copy. Test: James A. Young, Clerk of the Court of Appeals of Maryland.

[fol. 36] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 37 & 37a] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Sept. 9, 1930

To the Clerk of the Supreme Court of the United States:

1. In the matter of the preparation of the Record in this case, the appellant intends to rely upon the Assignment of Errors filed herein.

2. The entire Record is necessary for the consideration of the questions in law raised by the Assignment of Errors, except the plat of land, which omit.

Thomas M. Wampler, Thomas M. Wampler, In Proper Person.

Service of a copy of the above is acknowledged this 9th day of September, 1930.

Robert H. Archer, per W. R. J., Counsel for Appellees.

[File endorsement omitted.]

[fols. 38 & 38a] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION OF ADDITIONAL PART OF RECORD TO BE PRINTED —Filed Sept. 11, 1930

To the Clerk of the Supreme Court of the United States:

In the matter of the preparation of the Record in this case the Appellees request that there be included the plat of land referred to in the præcipe heretofore filed by the Appellant.

Thos. H. Robinson, Robert H. Archer, W. S. Marbury, Jr., Counsel for Appellees.

[File endorsement omitted.]

Endorsed on cover: File No. 35,324. Maryland Court of Appeals. Term No. 402. Thomas M. Wampler, appellant, vs. E. Lee Lecompte, State Game Warden of Maryland, and Frederick S. Barber, District Deputy, etc. Filed August 28, 1930. File No. 35,324.

(7)

FILE COPY

SEP 15 1930

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 402.

THOMAS M. WAMPLER, *Appellant*,

vs.

EDWIN LEE LECOMPTE,
FREDERICK S. BARBER,
Appellees.

PRINTED STATEMENT COMPLYING WITH RULE 12 OF THE COURT.

THOMAS M. WAMPLER,
In proper person.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 402.

THOMAS M. WAMPLER, *Appellant*,

vs.

EDWIN LEE LECOMPTE,
FREDERICK S. BARBER,
Appellees.

PRINTED STATEMENT COMPLYING WITH RULE 12 OF THE COURT.

A. The statutory provision which sustains the jurisdiction of this Court is Sec. 344, Title 28, U. S. Code Anno. (Judicial Code, Sec. 237) providing for jurisdiction of the Supreme Court where the validity of the statute of a State is drawn in question as being repugnant to the Fourteenth Amendment to the Constitution of the United States, and the decision of the

highest Court of the State was in favor of the validity of the statute.

B. The judgment of the State Court was rendered on the 12th day of June, 1930, and is found on page 29 of the transcript filed in this Court, printed record, page ——

The date on which the application for appeal was presented was the 2nd day of August, 1930, and is found on page 23 of the transcript filed with the Clerk, and on page .... of the printed record.

C. Nature of the case. This was a bill for an injunction to enjoin and restrain the appellees from interfering with the erection, maintenance and lawful use of a ducking blind, of the appellant, located and to be located in the waters of the Potomac River in front of the property of the appellant. The acts of appellees, who happened to be the State Game Warden and a Deputy Game Warden of Maryland, were justified by them by virtue of the statute of Maryland, Sections 40, 41 and 46 of Article 99 of the Code of Public General Laws of Maryland, title, Water Fowl, Birds and Game. The sole question involved in the suit is the validity of this statute. Its validity is challenged by appellant upon the ground that the said statute denied to appellant the equal protection of the laws, and due process of law, required and enjoined by the Fourteenth Amendment to the Constitution of the United States, and arbitrarily discriminated against him in violation of said amendment to said Constitution.

Appeal was taken from the Circuit Court of Charles County, Maryland, which held the statute valid, to the Court of Appeals of Maryland, which Court also sustained the validity of the statute.

All of which appears in the Assignment of Errors and Statement of Points, filed in this Court on the 9th day of September, 1930, and on pages 4, 7-11 of the transcript filed with the Clerk, printed record, page ....

The points aforesaid, upon which the jurisdiction of this Court is based, were made by the pleadings in the Circuit Court of Charles County, Maryland, and the Court of Appeals of Maryland, as appears from the transcript filed with the Clerk, pages 4-11, printed record, pages ....

D. The validity of a state statute being directly attacked as being repugnant to the Fourteenth Amendment of the Constitution of the United States, and the decision of the highest Court of the State being in favor of its validity, Sec. 344 U. S. C. A. (Judicial Code Sec. 237) directly, in terms confers jurisdiction.

Respectfully submitted,

THOMAS M. WAMPLER,
In proper person.